

*Routed
11/19/90*

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In re:) Docket No. TSCA-09-91-0002
PETROLEUM RECYCLING CORPORATION) COMPLAINT
Respondent.) AND
NOTICE OF OPPORTUNITY
FOR HEARING

I

COMPLAINT

This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2615(a). The Complainant is the United States Environmental Protection Agency (EPA), Region 9. The Respondent is Petroleum Recycling Corporation, which is, and was at all times relevant to this Complaint, a California corporation, with a place of business located at 2651 Walnut Avenue, Signal Hill, California.

The Administrator of the EPA is authorized by TSCA Section 16(a)(1), 15 U.S.C. Section 2615(a)(1), to assess a civil penalty

1 not to exceed \$25,000 per day for each violation of TSCA Section
2 15 (15 U.S.C. 2614). Authority to file a complaint to assess a
3 civil penalty has been delegated to the Regional Administrator of
4 the EPA, Region 9, by EPA Order 1200 TN 103, and by the Regional
5 Administrator to the Director, Air and Toxics Division, by EPA
6 Regional Order 1290.2A.

7 This Complaint and Notice of Opportunity for Hearing
8 (Complaint) serves as notice that the Complainant has reason to
9 believe that the Respondent has violated Section 15 of TSCA, 15
10 U.S.C. 2614, as follows:

11 COUNT I

- 12 1. Petroleum Recycling Corporation, a "person" within the
13 meaning of 40 C.F.R. 761.3 (hereinafter "Respondent")
14 operates plants at Signal Hill, California, Fontana
15 California, and San Diego, California and corporate business
16 offices located at 2651 Walnut Avenue, Signal Hill,
17 California (hereinafter collectively referred to as
18 "Facility").
- 19 2. On April 2, 1990, a representative of the U.S EPA conducted
20 an inspection of the Facility to determine compliance with
21 40 CFR Part 761 et seq., governing PCBs.
- 22 3. At the time of the inspection, the Inspector observed that
23 the Respondent engaged in the business of processing and
24 distributing in commerce used oil fuels to burners or other
25 marketers, and therefore is subject to the requirements of
26 40 C.F.R. Part 761.3 which regulate the marketing of used
27 oil.

1 4. Used oil to be burned for energy recovery is presumed to
2 contain quantifiable levels (2 ppm) of PCB unless the
3 marketer obtains analyses (testing) or other information
4 that the used oil fuel does not contain quantifiable levels
5 of PCBs. The person who first claims that a used oil fuel
6 does not contain quantifiable level (2 ppm) PCB must obtain
7 analyses or other information to support that claim.
8 Marketers who first claim that the used oil fuel contains no
9 detectable PCBs must include among the records required by
10 40 C.F.R. 266.43(b)(6)(i) copies of the analysis or other
11 information documententing his claim, and he must include
12 among the records required by 40 C.F.R. 266.43(b)(6)(ii), a
13 copy of each certification notice received or prepared
14 relating to transactions involving PCB-containing used oil.
15 40 C.F.R. 761.20(e).

16 5. At the time of the inspection, the Inspector observed that
17 the Respondent claimed that each load of used oil comprising
18 the waste oil contained in tank number 402 at the Signal
19 Hill facility and shipped for diposal to Systech
20 Environmental on or about December 11, 1989, did not contain
21 quantifiable levels of PCBs without having accurate analysis
22 (testing) or other information to support that claim, and
23 that the Respondent failed to maintain copies of the
24 analysis of each of the loads or other information
25 documenting this claim, in violation of 40 C.F.R. 761.20(e)
26 and 15 U.S.C. 2614(1)(C).

27 ///

COUNT II

1. Count II incorporates by reference the allegations contained in Paragraphs Numbered 1 and 2 of Count I as if fully recited herein.
2. At the time of the inspection, the Inspector observed that the Respondent engaged in the business of processing and distributing in commerce used oil fuels to burners or other marketers.
3. Unless otherwise specifically provided, PCBs at concentrations of 50 ppm or greater must be disposed of in an EPA approved incinerator, chemical waste landfill, or high efficiency boiler. 40 C.F.R. 761.60(a).
4. "Disposal" means intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items.
5. At the time of inspection, the Inspector determined that, on or about December 11, 1989, the Petroleum Recycling Corporation disposed of waste oil containing approximately 266 ppm PCBs at a facility that is not an EPA approved incinerator, chemical waste landfill, or high efficiency boiler that meets the criteria stated at 40 C.F.R. Part 761.60. 761.65 and 761.75, in violation of 40 C.F.R. 761.60(a) and 15 U.S.C. 2614(1)(C).

///

COUNT III

1. Count III incorporates by reference the allegations contained in Paragraphs Numbered 1 and 2 of Count I as if fully recited herein.
2. At the time of the inspection, the Inspector observed that from about December 12, 1989 until on or about March 31, 1990, the Respondent stored PCBs for disposal at the Respondent's Fontana, California facility and therefore is subject to the requirements of 40 C.F.R. 761.65 which regulates storage for disposal for PCBs and PCB Items.
3. PCB storage for disposal regulations at 40 C.F.R. Part 761.65 apply to the storage for disposal of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater.
4. Storage containers for liquid PCBs can be larger than the containers specified at 40 C.F.R. Part 761.65(c)(6) provided that the containers the containers are designed, constructed, and operated in compliance with Occupational Safety and Health Standards, 29 C.F.R. 1910.106 and that the owners or operators of any facility using containers described in paragraph (c)(7)(i) of this section shall prepare and implement a Spill Prevention Control and Countermeasure (SPCC) Plan as described in Part 112 of this title. Storage containers provided in paragraph (c)(7) of this section shall have a record that includes for each batch of PCBs the quantity of the batch and date the batch was added to the container. The record shall also include

1 the date, the quantity, and disposition of any batch of PCBs
2 removed from the container. 40 C.F.R. 761.65(c)(7) and (8).
3 5. At the time of the inspection, the Inspector observed that
4 during the time PCBs were stored at the Respondent's
5 Fontana, California facility, the Respondent had failed to
6 prepare and implement a Spill Prevention Control and
7 Countermeasure Plan as described in 40 C.F.R. Part 112 and
8 had failed to maintain a record that included all required
9 information listed at 40 C.F.R. 761.65(c)(8) for each batch
10 of PCBs added to and removed from the storage tank at the
11 Fontana facility, all in violation of 40 C.F.R. 761.65(c)
12 and 15 U.S.C. 2614(1)(C).

13 II

14 PROPOSED CIVIL PENALTY

15 Section 16(a) of TSCA, 15 USC 2615(a), authorizes a civil
16 penalty of up to \$25,000 per day for each violation of Section 15
17 of TSCA, 15 USC 2614. The civil penalty assessment is derived
18 through application of the "Guidelines for Assessment of Civil
19 Penalties Under Section 16 of the Toxic Substances Control Act;
20 PCB Penalty Policy" Federal Register, Vol. 55, No. 72 (April 13,
21 1990). Based upon the foregoing Guidelines, EPA proposes to
22 assess the following civil penalty:

23
24 COUNT I

25 IMPROPER MARKETING (Failure to support claim
26 that used oil contained less than 2 ppm
PCBs).....\$20,000.00
40 C.F.R. 761.20(e)
27 15 U.S.S. 2614 (1)(C)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

COUNT II

DISPOSAL VIOLATION (Improper disposal of
PCBs).....\$25,000.00
40 C.F.R. 761.60(a) and (d)
15 U.S.C. 2614 (1)(C)

COUNT III

STORAGE FOR DISPOSAL VIOLATION (Failure to prepare
and maintain SPCC Plan and to maintain records of PCBs
added to and removed from storage tank).....\$ 20,000.00
40 C.F.R. 761.65
15 U.S.C. 2614 (1)(C)

Total Proposed Penalty.....\$ 65,000.00

III

NOTICE OF OPPORTUNITY FOR HEARING

You have the right to request a hearing on any material fact
contained in the Complaint or the amount of the proposed penalty.
If you wish to request a hearing and avoid being found in
default, you must file a written Answer to the Complaint with the
Regional Hearing Clerk, EPA Region 9, 75 Hawthorne Street, San
Francisco, California 94105, within twenty (20) days of your
receipt of the Complaint. The Answer must clearly and directly
admit, deny, or explain each of the factual allegations contained
in the Complaint with regard to which you have any knowledge. A
failure to admit, deny, or explain any material fact allegation
will constitute an admission of the allegation. The Answer must
also state (1) the circumstances or arguments which constitute
the grounds of defense, (2) the facts which you intend to place
at issue, and (3) whether a hearing is requested.

If you fail to file a written Answer within twenty (20) days
of your receipt of the Complaint, you may be found in default.

1 Your default will constitute an admission of all facts alleged in
2 the Complaint and a waiver of your right to a hearing. The
3 penalty proposed in the Complaint will be imposed without further
4 proceedings.

5 The public hearing that you request will be held in a
6 location determined in accordance with 40 C.F.R. Part 22. The
7 hearing will be conducted in accordance with the provisions of
8 the Administrative Procedure Act, 5 U.S.C. 552 et seq., and the
9 Rules of Practice, 40 CFR Part 22 (45 F.R. 26360), a copy of
10 which accompanies the Complaint.

11 IV

12 SETTLEMENT CONFERENCE

13 Whether or not you request a hearing, you may confer
14 informally with EPA to discuss the alleged facts, violations or
15 amount of the proposed penalty. An informal conference does not,
16 however, affect your obligation to file a written Answer within
17 twenty (20) days of your receipt of the Complaint.

18 Any settlement reached as a result of an informal conference
19 will be embodied in a written Consent Agreement and Order. The
20 issuance of the Consent Agreement and order will constitute a
21 waiver of your right to a hearing on any matter to which you have
22 stipulated.

23 If a settlement cannot be reached through an informal
24 conference, the filing of a written Answer within twenty (20)
25 days of your receipt of the Complaint will preserve your right to
26 a hearing.

27 ///

EPA encourages all parties against whom a penalty is proposed to explore the possibility of settlement. To request an informal conference, you should contact David M. Jones, Assistant Regional Counsel, EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94103, telephone number (415) 744-1314.

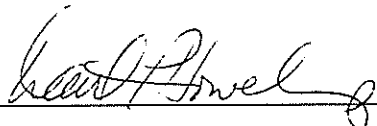
Date

David P. Howekamp
Director
Air and Toxics Division

1 EPA encourages all parties against whom a penalty is
2 proposed to explore the possibility of settlement. To request an
3 informal conference, you should contact David M. Jones, Assistant
4 Regional Counsel, EPA, Region 9, 75 Hawthorne Street, San
5 Francisco, California 94103, telephone number (415) 744-1314.

6
7
8 12/4/90

9 Date

10 
11 _____
12 David P. Howekamp
13 Director
14 Air and Toxics Division
15
16
17
18
19
20
21
22
23
24
25
26
27


CERTIFICATION OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing, Docket No. TSCA-09-91-0002 was filed with the Regional Hearing Clerk, Environmental Protection Agency, Region 9, and that a copy addressed as follows, was served by mailing certified mail, return receipt requested, postage prepaid, in a United States Postal Mail Box, at City and County of San Francisco, California, on the 5th day of December, 1990:

R. D. McAuley
President
Petroleum Recycling Corporation
2651 Walnut Avenue
Signal Hill, CA 90806

Certified Mail No.
P-841 509 843

Dated at City and County of San Francisco, California, this
5th day of December, 1990.

 for
Greg Pennington, Secretary
Pesticides and Toxics Branch
Air and Toxics Division
EPA, Region 9